

THE HONORABLE BENJAMIN SETTLE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CLYDE RAY SPENCER,

Plaintiff

V.

DETECTIVE SHARON KRAUSE and
SERGEANT MICHAEL DAVIDSON

Defendants.

NO. C11 5424 BHS

**DEFENDANTS' OBJECTION TO
PLAINTIFF'S SUPPLEMENTAL
DISCLOSURE OF TRIAL
WITNESSES**

**NOTE FOR CONSIDERATION:
Friday, December 27, 2013
(Trial Date: January 7, 2014)**

Defendants Sharon Krause and Michael Davidson (hereafter “defendants”) hereby object to Plaintiff’s Supplemental Disclosure of Witnesses That Will Testify at Trial (Dkt. 222, hereafter “Plaintiff’s Supplemental Disclosure”) on the grounds that it is untimely and unauthorized under the Proposed Pretrial Order filed by the parties (Dkt. 210) and W.D. Local Rule 16.1, and it violates this Court’s Order Granting in Part and Denying in Part Defendants’ Motion to Strike Plaintiff’s Supplemental Disclosures and Bar Testimony (Dkt. 127, hereafter “Order on Supplemental Disclosures”).

As required by W.D. Local Rule 16.1, the Proposed Pretrial Order filed by the parties in this case concludes with the following provision:

**DEFENDANTS' OBJECTION TO PLAINTIFF'S
SUPPLEMENTAL DISCLOSURE OF TRIAL
WITNESSES - 1**

Cause No: C11-5424 BHS

*LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.*
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX (360) 357-3511

1 This order has been approved by the parties as evidenced by the signatures of their
 2 counsel. This order shall control the subsequent course of the action unless
 3 modified by a subsequent order. This order shall not be amended except by order
 4 of the court pursuant to agreement of the parties or to prevent manifest injustice.

5 Dkt. 210, p. 34, lns. 1-4. Plaintiff did not identify either of the two witnesses now belatedly
 6 disclosed, Paul Henderson and Robert Yoseph, as witnesses who will or might testify at
 7 trial in the Proposed Pretrial Order. Dkt. 210, p. 7, ln. 21 - p. 11, ln. 21. Since plaintiff did
 8 not seek or obtain an order from this Court authorizing this belated addition of trial
 9 witnesses, defendants object to their disclosure.

10 The belated disclosure of these two trial witnesses also violates this Court's Order
 11 on Supplemental Disclosures. The two new trial witnesses were among nine "belatedly
 12 identified witnesses" on a list from which this Court authorized plaintiff to select two for
 13 further use in the case, and the discovery deadline was extended three weeks to
 14 accommodate the additional discovery necessitated by their late disclosure. Dkt. 127, lns.
 15 7-14. Pursuant to this Order, plaintiff disclosed only one witness, Mr. Yoseph. Declaration
 16 of Guy Bogdanovich in Support of Objection to Plaintiff's Supplemental Disclosure of Trial
 17 Witnesses, ¶ 2 and Ex. A. Consequently, Mr. Henderson was never properly disclosed even
 18 in discovery, and his use at trial is objected to on this additional ground.

19 Nor would Mr. Henderson be able to testify to any relevant, admissible facts based
 20 upon personal knowledge. As shown in previous pleadings, Mr. Henderson's only
 21 involvement in this matter was as a private investigator who worked for and reported to
 22 Peter Camiel and Howard Goodfriend, two of plaintiff's former criminal defense attorneys
 23 representing plaintiff on his appeals and/or habeas corpus proceedings dating back to the
 24 1990s. Dkt. 108, p. 3, lns. 12-25; Dkt. 109, pp. 17-43. As such, any knowledge he claims
 25 to possess would be based upon inadmissible hearsay from others.

1 As for Mr. Yoseph, the summary of his relevant knowledge provided when he was
2 belatedly identified as a witness during discovery was strictly limited to knowledge of
3 defendant Sharon Krause's investigative and interviewing techniques:

4 Attorney Yoseph is expected to testify regarding his knowledge of the investigative
5 and interviewing techniques of Sharon Krause, including but not limited to Sharon
6 Krause's investigative and interviewing techniques in the Nelson Melo case.

7 Dkt. 109, p. 47, lns. 10-12. Plaintiff's claim regarding investigative techniques utilized by
8 defendant Krause has been dismissed, rendering Mr. Yoseph's described knowledge
9 irrelevant and inadmissible. Plaintiff cannot now belatedly expand the scope of Mr.
10 Yoseph's alleged knowledge by adding reference to Sharon Krause's "investigative
11 techniques and reputation for honesty and integrity" as stated in Plaintiff's Supplemental
12 Disclosure. Since Mr. Yoseph was never properly disclosed as a witness with alleged
13 knowledge of Sharon Krause's reputation for integrity and truthfulness even in discovery,
14 his use at trial is objected to on this additional ground.

15
16 DATED this 27th day of December, 2013.
17
18

/s/ *Guy Bogdanovich*

19 Guy Bogdanovich, WSBA № 14777
20 Attorney for Defendant Sharon Krause
P.O. Box 11880
21 Olympia, WA 98508-1880
Telephone: (360) 754-3480
Fax: (360) 357-3511
22 email: gbogdanovich@lldkb.com

/s/ *Jeffrey A. O. Freimund*

Jeffrey A. O. Freimund, WSBA No. 17384
Attorney for Defendant Michael Davidson
Freimund Jackson Tardif & Benedict Garratt
711 Capitol Way South, Suite 602
Olympia, WA 98502
Telephone: (360)534-9960
Fax: (360)534-9959
23 email: jeffF@fjtlaw.com

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the United States of America that on this 27th day of December, 2013, I electronically filed Defendants' Objection to Plaintiff's Supplemental Disclosure of Trial Witnesses and the supporting Declaration of Guy Bogdanovich, with the Clerk of the Court using the CM/ECF system, who will send notification of such filing to the following parties:

Plaintiff Clyde Spencer and Attorneys

dhjohnson43@aol.com
kathleen.zellner@gmail.com
dandavies@dwt.com

DATED this 27th day of December, 2013 at Tumwater, Washington.

/s/ Lisa Gates

**DEFENDANTS' OBJECTION TO PLAINTIFF'S
SUPPLEMENTAL DISCLOSURE OF TRIAL
WITNESSES - 4**
Cause No: C11-5424 BHS

*LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.*
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511